

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN ROBERT DEMOS JR,

Plaintiff,

v.

DEBRA L STEPHENS,

Defendant.

Case No. 3:22-cv-05428-JLR-TLF

ORDER DENYING PLAINTIFF'S
MOTION AND APPLICATION TO
PROCEED IN FORMA PAUPERIS


The Court, having reviewed the Report and Recommendation of Judge Theresa L. Fricke, United States Magistrate Judge, and the remaining record, does hereby find and ORDER:

- (1) the Court adopts the Report and Recommendation;
- (2) plaintiff's motion to proceed *in forma pauperis* is denied;
- (3) the Court's denial of plaintiff's motion to proceed *in forma pauperis* does not constitute a separate strike, because the Court did not make a ruling on whether any claim in the complaint was frivolous, malicious, or failed to state a claim. *See, El-Shaddai v. Zamora*, 833 F.3d 1036, 1043 (9th Cir. 2016) ("Because the grounds for dismissal . . . were that [plaintiff] had incurred too many strikes, and not because the cases were themselves frivolous, malicious, or failed to state a claim, they do not count as separate strikes against [plaintiff]").

1 (4) If plaintiff wishes to pursue this case, he must pay the Court filing fee within
2 21 days of this Order; failure to pay the filing fee will result in the case
3 being closed; and

4 (5) if plaintiff appeals, plaintiff will not continue *in forma pauperis* on appeal.

5 Dated this 26th day of Sept. 2022

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9 James L. Robart
10 United States District Judge
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